

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

FORTUNATO ALBORNOZ	§	
VS.	§	CIVIL ACTION NO. 1:11-CV-580
M. MARTIN	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Fortunato Albornoz, a federal prisoner currently confined at FCI Beaumont Low, proceeding *pro se*, filed this petition for writ of habeas corpus contesting the legality of his conviction.

The Court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this action be dismissed.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds the objections lacking in merit. As the Magistrate Judge correctly concluded, petitioner has failed to demonstrate he was convicted of a nonexistent offense or that his grounds for review were foreclosed by circuit law at the time when the claim should have been raised in petitioner's trial, appeal, or first Section 2255 motion. *See Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001). Although petitioner cites to *Bond v. United States*, – U.S. –, 131 S.Ct. 2355, 180 L.Ed.2d 269 (2011) in support of his claims, *Bond* does not establish that petitioner was convicted based upon conduct that did not constitute a crime. In *Bond*, the Supreme Court held only that a person convicted of a federal offense had standing to assert that in enacting the applicable criminal statute, Congress exceeded its power

under the Tenth Amendment. *Id.*

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

So **ORDERED** and **SIGNED** this **21** day of **December, 2011**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge